

N.D.A.G. Letter to Renner (Jan. 10, 1992)

January 10, 1992

Mr. Jerry Renner
Kidder County State's Attorney
Steele, ND 58482

Dear Mr. Renner:

Thank you for your November 15, 1991, letter asking whether a city may establish a public recreation system under N.D.C.C. ch. 40-55 without holding an election. The proposed public recreation system would not levy a tax for the recreation system.

N.D.C.C. § 40-55-06 authorizes the governing body to establish a "recreation board or commission which shall possess all the powers and be subject to all the responsibilities of the local authorities under this chapter." A system may be established under § 40-55-06 by the governing body's unilateral action, without a vote. If a system is established pursuant to § 40-55-06, a tax may not be levied. Fiscal support for such a system must be from the governing body's general fund.

N.D.C.C. § 40-55-08 provides that the governing body of the municipality, school district, or park district can, on its own motion, or must, upon petition of its citizens, establish a public recreation system. By establishing a system under § 40-55-08, the governing body is also authorized to levy a tax. However, a system and tax cannot be established under N.D.C.C. § 40-55-08 unless an election is held.

I trust this answers your question.

Sincerely,

Nicholas J. Spaeth

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